

REMARKS

This response and amendment is being made under 37 CFR 1.116 in a good faith effort to place the application in condition for allowance or in better condition for appeal.

A declaration by the inventor traversing the rejections under 37 CFR 1.132, which is allowed under 37 CFR 1.116(e) also is being presented and should be entered. A showing of good and sufficient reasons why the declaration is necessary and was not earlier presented is provided in Section 2 below.

1. Claims Amendments.

Applicant has amended the claims to address the examiner's concerns under 35 USC 112. Specifically:

Claims 1, 8, 9, 13, 14, 18, 19, and 23 have been amended to clarify that the invention is related to watercolor paints, a subset of water-based paints. No new matter has been added.

Claim 1 has been amended to incorporate the subject matter of Claim 6. No new matter has been added.

Claim 6 has been cancelled.

Claims 8 and 18 have been amended to remove the language "other common and known pigments and fillers" and "other common and known extenders" that was objected to by the examiner.

Claims 9 and 19 have been amended to be limited to watercolor paints, by removing the language regarding "pens, and inks".

Claims 13, 18 and 23 have been rewritten in independent form including their base claims and any intervening claims. No new matter has been added.

No new matter has been added and these amendments address all of the outstanding issues under 37 CFR 112.

2. Inventor's Declaration Under 37 CFR 1.132 Traversing Rejections

Attached hereto is an inventor's declaration under 37 CFR 1.132 traversing the rejection. This declaration was not presented earlier because, inter alia, (1) it was not believed necessary in view of the substantial patentable differences between the only patent and the present invention, (2) Applicant believed the amendments to the claims were sufficient to avoid the cited patent, and (3) each USPTO Office Action in this patent application has been from a different examiner and this declaration will assist in showing the newest examiner the distinctions between the cited patent and the present invention and the allowability of the claims of the present patent application. This declaration is necessary because (4) the cited patent, and in particular one component (graphite) of the article of the patent, has a specific function (electrical conductance) that is patentably necessary, while the present invention does not have this component. While both inventions disclose the use of carbon black, this is not patentably necessary, and this declaration helps to explain this difference.

(1) There are substantial differences between Lovell '073 and the present invention. As discussed in the attached declaration, the cited patent is an electrically resistant temperature adjustable article that provides temperature controllable properties to an article primarily classified in Class 428/206 (Stock material or miscellaneous articles – structurally defined web or sheet ...). The present invention is a coating for artist canvas and as claimed is not disclosed by a composition for electrical resistance or temperature control primarily classified in Class 442/059 (Fabric - Coated or impregnated ...). The disclosure of Lovell '073 cannot be used in the present invention and vice versa.

(2) Lovell '073 does not disclose the use of a pigment. Contrary to the examiner's position, graphite is not disclosed as a pigment in the context of Lovell '073 and is not generally considered a pigment by those of ordinary skill in the art. Specifically, Lovell '073 discloses the use of graphite to carry an electric current so as to allow a coating to have conductive resistance. See, Lovell '073, Col. 2, lines 14-16. Further, Lovell '073 acknowledges that latexes and paints have low electrical resistance, therefore inferentially differentiating the Lovell '073 coating from the coatings of the present invention. In the "Detailed Description of the Preferred

Embodiments" section of Lovell '073, Column 5, lines 16 – 20, Lovell discusses "Other optional additives ... including, for example colorants, fillers and extenders" ... that may be present. Then in Column 6, about lines 16 – 20, Lovell discusses "...pigments such as titanium dioxide (and) zinc oxide..." as well as extenders and other paint components. It appears to me that Lovell has clearly differentiated the purpose of the graphite from that of a pigment. And none of the claims in Lovell '073 uses the term "pigment" in any discussion of his use of the graphite.

(3) The amendments to the claims avoid the patent. As discussed in the attached declaration, the claims as previously amended, and the current claims, avoid the patent. The present invention is claimed as a coating for an artists canvas (see specifically independent Claims 9 and 19), which is patentably distinct from electrical resistance and temperature controllable devices. Applicant believed that the amendments made in the prior response were sufficient to address the previous examiner's concerns.

(4) Dealing with different examiners. Although each of the three examiners has been in the same Art Unit, shifting the patent application from one examiner to another necessarily injects the need for additional explanation regarding the invention. Based on the current examiner's reliance on the immediately prior examiner's rejections, Applicant submits that the additional educational opportunity that can be provided by the enclosed declaration would be helpful to the current examiner.

(5) The patent and the present invention are in patentably distinct fields. As discussed in the attached declaration, the present invention is, summarily, a coating to put on canvas that allows the artist to apply water-based watercolor paints without running or bleeding and to remove (if desired by the artist during the painting process) the watercolor paints from the canvas without damaging the canvas.. The cited patent is an electrical-resistance coating for providing temperature adjustment capability to an article having a different composition and structure. These two inventions are not interchangeable.

Thus, Applicant submits that the enclosed declaration is necessary and helpful in examining the present invention and there are good and sufficient reasons why it was not submitted sooner.

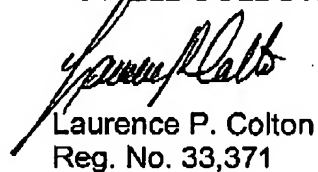
3. The Claims Are Not Anticipated By Or Obvious In View Of US Patent No. 5629073 To Lovell

Claims 1-12, 14-17, and 19-22 continue to be rejected under 35 USC 102 as anticipated by US Patent No. 5629073 to Lovell (Lovell '073), and Claims 13, 18, and 23 continue to be rejected under 35 USC 103 as obvious in view of Lovell '073, for the reasons set forth in the Office Action dated 9 January 2006. Applicant reasserts and incorporates herein the arguments made in the Response dated 2 May 2006. Further, Applicant incorporates herein the discussion contained in the attached declaration.

CONCLUSION

Applicant submits that the patent application is in proper condition for allowance, and respectfully requests such action. If the Commissioner or the Examiner has any questions that can be resolved over the telephone, please contact the below signed attorney of record.

Respectfully submitted,
POWELL GOLDSTEIN LLP



Laurence P. Colton
Reg. No. 33,371

POWELL GOLDSTEIN LLP
1201 West Peachtree Street NW
14th Floor
Atlanta GA 30309-3488

Tel: 404.572.6710
Fax: 404.572.6999
E-Mail: lcolton@pogolaw.com